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BEFORE THE

SURFACE TRANSPORTATION BOARD

STB EX PARTE NO. 582 (Sub-No. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES

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VERIFIED COMMENTS OF
FARMRAIL SYSTEM, INC.

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Dated: May 15, 2000

Attorneys for Farmrail System, Inc.
and its subsidiary railroads

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VERIFIED COMMENTS OF FARMRAIL SYSTEM, INC.

Farmrail System, Inc. ("FMRS") is filing these comments in response to the Board's Advance Notice of Proposed Rulemaking ("ANPR") served March 31, 2000. The ANPR seeks public comments on modifications to the Board's regulations relating to major rail consolidations (49 CFR §§1180.0-1180.9). In the ANPR, the Board sets forth a number of issues on which it wishes to receive comments. Additionally, the Board has invited parties to suggest any other ways in which its merger regulations should be modified "to promote and enhance competition and/or other public interest goals." ANPR at 3.

Summary

The railroad regulatory pendulum has swung too far – from a standard of "public convenience and necessity" to unencumbered free-market forces that have driven the rail industry to extraordinary consolidation. With this consolidation have come strains on the system as the merged railroads strive to justify the combinations by reducing costs and eliminating duplicate facilities. These reductions have resulted in substandard service and Class I railroad policies and practices that particularly affect captive shippers and short lines, especially with respect to carload business.

The Board now needs to refocus its regulation of mergers on the benefits that can derive from the promotion of rail traffic growth for all carriers. That growth can best be accomplished by preserving and enhancing competitive options for captive shippers and the short lines that serve the fringe of America's rail system. Recent merger approvals have preserved competition in many rail corridors by means of trackage rights affording two-carrier access. That minimal level of competition should be extended more broadly throughout the nation to stabilize the railway system and keep outlying shippers and communities competitive. In particular, the Board should stimulate competition by requiring merging Class I carriers to: (1) eliminate "paper barriers" restricting competition; (2) provide short lines with competitive (non-discriminatory) pricing and car supply; and (3) allow short-line connections to perform the switching and gathering services they were intended to provide.

Description of Farmrail System, Inc.

FMRS is owned entirely by its employees, individually and through an Employee Stock Ownership Plan. It is a holding company for two wholly owned Class III common carrier subsidiaries, Farmrail Corporation ("FMRC") and Grainbelt Corporation ("GNBC").[1] Together,

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[1] FMRS also has an ownership interest in another short line, Finger Lakes Railway Corp. ("FGLK"). FMRS's general comments herein also reflect its experience as a partial owner of FGLK; however, FGLK is separately filing its own comments as well.

they operate approximately 354 miles of contiguous light-density line segments comprising "Western Oklahoma's Regional Railroad." *See* the map attached as Appendix A.

All the properties operated by FMRC were acquired by Oklahoma Department of Transportation ("ODOT") to preserve essential services that otherwise would have been lost to abandonment. FMRC was organized in 1981 as a neutral terminal switching carrier for the connecting lines of Burlington Northern Railroad Company ("BN") and The Atchison, Topeka and Santa Fe Railway Company ("ATSF")[2] between Clinton and Elk City. Its original 35-mile segment had been part of the 1980 system abandonment by the bankrupt Chicago, Rock Island & Pacific Railroad Company ("Rock Island") following a failed merger, as were subsequent extensions east and west, to a total of 78 miles. After ATSF decided to dispose of its "Orient Line" south of Cherokee, ODOT acquired the Oklahoma segment between Thomas and Elmer (approximately 89 miles) from an interim owner in 1992 and selected FMRC as its operator. FMRC leases all of its rail lines from ODOT under long-term agreements expiring in 2015, with rent based upon FMRC's freight revenue. The principal communities served by FMRC are Altus, Clinton, Elk City, and Weatherford.

GNBC, now 178 miles in length, operates rail lines purchased from BN pursuant to a 1987 Purchase and Sale Agreement, including a right-of-way lease which restricts GNBC's ability to handle freight with competitors of BN. GNBC's line extends generally north-south from Enid to Frederick and serves the larger communities of Enid, Okeene, Thomas, Clinton, Cordell, Hobart, Snyder and Frederick.

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[2] BN has since merged with ATSF to form The Burlington Northern and Santa Fe Railway Company ("BNSF"). As used herein, references to "BN" and "ATSF" mean the respective companies prior to their merger, and "BNSF" means the combined company.

FMRC's service area includes the primary producing area for hard red winter wheat (the preferred variety for export) and also is at the center of extensive Anadarko Basin energy reserves. Wheat is the predominant commodity handled by FMRC, nearly all of which moves to the Texas Gulf Coast ports. The balance of its traffic is comprised of drilling fluids, fertilizer, farm machinery and beer. The preponderance of FMRC's grain loadings flows south to the Gulf Coast via its connection with BNSF at Altus. Prior to the BNSF merger, a substantial portion of FMRC's wheat traffic moved north through Enid to ATSF because of rate incentives offered by ATSF. In 1999, FMRC carried 2,085 carloads of freight for 17 on-line customers at 20 locations, 82% of which were wheat.

The economic base of the area served by GNBC similarly rests on winter wheat, but also includes high-grade gypsum products, fertilizer, feed ingredients and drilling fluids. In 1999, GNBC carried 4,516 carloads of freight for 23 on-line customers at 29 locations, 41% of which were wheat. Most of GNBC's wheat traffic has traveled south to the Gulf ports since BN eliminated Enid transit rates in the early 1990s. BN (and BNSF) have not offered competitive short-haul rates to Enid since that time, and only after pressure from a key merchandiser has BNSF acquiesced to GNBC handling of traffic to Enid under local rates.

Prior to the formation of FMRC and GNBC, their western Oklahoma territory was principally served by rail lines of BN and ATSF. Each had north-south lines intersecting at Clinton, where both were crossed by the east-west Rock Island line now operated by FMRC. BN and ATSF had the ability to interchange traffic with each other at Clinton and Enid and with Rock Island at Clinton. At Enid, both railroads also connected with the former Oklahoma-Kansas-Texas Railroad Company ("OKKT"), now part of Union Pacific Railroad Company

("UP"), and at Altus with the former Missouri-Kansas-Texas Railroad Company, now Wichita, Tillman & Jackson Railway Co., Inc. ("WTJR"). Since 1981, FMRC and GNBC have filled the voids created in western Oklahoma as Rock Island, BN and ATSF sequentially withdrew from that market.

Both GNBC and FMRC protested the proposed merger between BN and ATSF on the grounds that they and their shippers would be losing active competitive options as a result of the merger. The Interstate Commerce Commission ("ICC") recognized that GNBC would suffer reduction in competitive alternatives from three (two of which were restricted) to two (one of which was restricted). The ICC attempted to rectify this harm by providing GNBC trackage rights to Southern Pacific Railroad Company ("SP") at Quanah, Texas, in an attempt to replace ATSF as a competitive alternative. However, the trackage rights continued to be subject to the BN blocking provisions.

The ICC did not grant FMRC any relief. Rather, it found that FMRC could indirectly use the GNBC access even though the required routing would be circuitous. The ICC was upheld on appeal, with the Court of Appeals finding that the option provided by the ICC was sufficient even though there was no evidence that, with the block and built-in inefficiencies, UP or SP could or would be an actual viable competitive option for shippers.

In fact, this has been the case. UP has continued not to be a viable competitive option in the region served by FMRC and GNBC, and with the subsequent merger of UP and SP, no grain has been shipped over the access at Quanah.

Public Policy Goals

The statute governing major carrier consolidations provides that the Board is to approve a merger or consolidation of two or more Class I carriers "when it finds the transaction is consistent with the public interest." 49 U.S.C. §11324(c).[3] In this proceeding, the Board should revisit how it determines the "public interest" in evaluating prospective Class I mergers. FMRS believes that its recommendations are consistent with the public interest, particularly as reflected in the following goals of the rail transportation policy set forth in 49 U.S.C. §10101:

> (1) to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail;
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> * * *
>
> (3) to promote a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues, as determined by the Board;
>
> (4) to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense;
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> * * *
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> (12) to prohibit predatory pricing and practices, to avoid undue concentrations of market power, and to prohibit unlawful discrimination . . .

FMRS believes that the Board can adopt meaningful and enforceable regulations that will increase the public benefits of a proposed transaction by promoting as well as preserving

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[3] This differs from the test for transactions which do not involve the merger or control of at least two Class I carriers, where the Board is required to approve the application *unless* there will be a substantial lessening of competition and the anticompetitive effects outweigh the public interest. 49 U.S.C. §11324(d).

competition, and by allowing the service being provided by short line railroads over light-density lines in rural areas to be more competitive.

Current merger policy seeks to protect competition and not competitors. This policy has allowed the pleas of short lines in various merger proceedings about prospective lost revenues to be rejected. However, short lines are not truly competitors of their Class I connections. Rather, the role they play is much closer to that of a shipper – they collect traffic and deliver it to their trunk line connections in aggregated form, providing valuable marketing and switching services in the process. The Board has begun to recognize this similarity:

> In our merger decisions, including this one, we have given special consideration to shortline interests, generally providing protections similar to those offered shippers...
>
> We are keenly aware that the shortlines are an important part of the national rail transportation system. They provide a valuable service in gathering and distributing traffic that generally flows over the lines of the Class I carriers, and they are usually able to provide this type of service at a lower cost than the larger carriers can achieve....

CSX and NS – Control and Operating Leases – Conrail, STB Finance Docket No. 33388, Decision 89 (served July 23, 1998) at 76. Recognizing this role in the Conrail control proceeding, the Board made the NIT League protections for shippers available to short lines. *Id.* at 18 n.30. The Board should continue to recognize the special role of short lines and reflect it in future merger guidelines.

General Observations

The first 20 years of rail deregulation have resulted in extraordinary corporate consolidation and consequent shipper and public reaction. As amply demonstrated in four days of testimony before the Board in March, 2000, that interest has shifted from concern about obsolete regulatory constraints on intermodal competition two decades ago to troublesome current issues of rail-to-rail competition and problems of captive shippers. Excessive downsizing of physical plant and personnel against a backdrop of unprecedented economic expansion, exacerbated by flawed merger implementation, has rendered the industry unable to cope with shipper demand or to improve its market share of inter-city freight. Service reliability has seriously deteriorated, and inadequate returns on invested capital cause the carriers' long-term financial viability to remain in question.

At this far-advanced stage of industry restructuring, additional end-to-end mergers are not necessary to deliver customer service – operating discipline and capacity restoration are. In 1963, the bankrupt New York, New Haven & Hartford Railroad Company offered a 53-hour through schedule from Boston to Chicago for carload merchandise freight, with no fewer than six participating carriers. (Today, single-line service for the same traffic reportedly takes four to six days.) The New Haven was able to do so because of adequate physical plant and a commitment to performance throughout the entire route. The principal reason why that schedule cannot be achieved today is that the merged carriers have downsized themselves to the point where service and administrative shortcomings are evident.

As noted by the Board, cost-cutting opportunities have been largely exhausted. ANPR at 2. Accordingly, the Board needs to help rail management shift the emphasis in future mergers from mere growth in size and increased market dominance to internal system growth. Unless real value is created for rail customers, it will not be possible to create sustaining value for shareholders. Projected savings from past mergers have proved largely illusory, and obsession with producing savings to satisfy Wall Street have resulted in serious deterioration of service. Creation of a transcontinental North American duopoly in the hope of solving or masking both problems hardly seems advisable under current circumstances.

The prescription calls for more competition, not less, in order to elevate service standards and open up truck-sensitive markets that have been largely ignored during the "good times" for business. That competition also should be extended outward from the long-haul core system to include the 50,000 route-miles now operated by small "feeder" railroads. Those carriers must be strengthened in the interest of stabilizing the entire railway network, keeping outlying shippers and communities competitive in their markets, and defusing political concern about further contraction of a national rail infrastructure that already has been reduced from 260,000 miles to about 170,000.

The Staggers Rail Act of 1980 was enacted at a time of concern about the domestic railroad industry's financial health and its ability to compete effectively with other modes of transportation. Competitive circumstances have changed dramatically since then as the Class I carriers consolidated through a sequence of mergers and downsized by means of abandonments and sales of light-density lines to service-oriented entrepreneurs such as FMRS. The result after two decades is a transformed industry comprised of four mega-railroads (duopolies in the East and West) and more than 500 feeder lines, roughly half of which were created by major-carrier spin-offs (sales or leases). These short lines define the outer limits of the remaining rail network at the turn of this new century.

The goal of the Staggers Act was to remove regulation where it was not deemed necessary, but it was not intended to enhance carrier market power. The design was to rely upon competition to protect shippers and simultaneously to enhance the industry's financial condition. The shipper testimony presented to the Board in March and depressed stock market valuations of Class I equity securities suggests substantial failure on both counts.

During the post-Staggers period of industry restructuring, federal regulators were inclined to let market forces work as the newly deregulated regime evolved, focusing on rationalization and efficiency. Until recently, there has been no compelling reason to address the effects of a dramatically altered size disparity and balance of economic power between the "Big Four" and "Little 500." Though the small railroads individually average fewer than 100 miles in length, in the aggregate they now operate 29% of domestic route mileage and contribute nearly 10% of the Class I carriers' annual revenues through traffic interchange. Collectively, they exceed the largest Class I in terms of mileage and have preserved vital links to the North American rail system for many communities, especially in rural areas where that access has important socio-economic consequences.

The Staggers Act essentially gave the major railroads license to discriminate among customers, in the belief that free-market economics would be beneficial to the public by enhancing intermodal competition. Free markets do not work when there is an inordinate concentration of economic power, however, and experience in Canada suggests that duopolies are not the answer. *Laissez-faire* oversight has allowed the regulatory pendulum to swing too far, and the resulting service deficiencies and pricing disparities simply have become too great to ignore. From the perspective of a short-line customer, the present circumstances cry out for increased industry oversight, as the former regulatory standard of "public convenience and necessity" has given way to unfettered market forces that do not promote genuine competition.

In particular, the rate and service practices of the Western Class I carriers threaten to decouple many light-density branch lines on the fringe of the national system from the more heavily traveled long-distance routes. Rural America's rail gathering system is at risk.

The fringe of today's national rail system looks a good deal different than it did after World War II. Connectivity and flexibility has been significantly altered by abandonments that changed many former through routes into branch-line stubs and by imposition of restrictive paper barriers on others. As a result, most of the nation's post-Staggers short lines are captive to a single connecting Class I, thereby protecting traffic for the divesting carrier but effectively shutting customers out of practical rail access to markets not served by that carrier.

The industry has either forfeited business or accepted the expense of routing circuity as a trade-off against maintaining what was considered non-core trackage. There no longer are direct routes from Boston to Montreal, Richmond to Raleigh, or Memphis to Amarillo. That traffic is moving by trucks, which are free to turn at any intersection and have benefited from an expanded highway infrastructure, even as the railroads were shrinking their own.

Like any other contemporary business, railroads need to grow. Their substantial financing requirements can only be satisfied in the private sector if the industry is expanding and producing investment returns in excess of the cost of capital. Leaders acknowledge that further growth beyond that of the general industrial economy depends on recovering business lost to truckers over the past half-century. FMRS notes that many railroad marketers become apoplectic when business is lost to a rival railroad, but often seem indifferent to divertible traffic that is moving by truck. That mind-set is not conducive to improving the railroads' appallingly small share of the national transportation dollar. Competition is the engine of growth – a stimulus to market expansion.

More than 250 of today's small railroads presumably were created in lieu of abandoning branch and secondary lines. Most can afford to run at slower speeds with lower track classifications and to offer service benefits that the Class I predecessors could not or would not match. Many short lines operating parts of former through routes also have developed their own profitable short-haul business. FMRS agrees with a Providence and Worcester Railroad Company spokesman recently quoted as saying, "With scheduled service, it's amazing what you can sell to the customer." He described a route of less than 400 miles: "We're doing this four-railroad move in four days with a one-day variability. This shows that a single seamless line is not necessary [to provide scheduled service]." Atlantic Northeast Rails & Ports, May 2, 2000, at 2.

As the Class I carriers have grown much larger through mergers, they have emphasized longer-distance single-line traffic and forfeited shorter hauls to the trucks. Although the major railroads have improved their short-haul economics by reducing crew sizes and other expenses, they have not taken advantage of a lower cost structure to solicit truck-competitive short-haul carload business aggressively. Elimination of paper barriers and expanded haulage relationships could extend small-carrier marketing initiatives to the benefit of all participants. There are numerous "black holes" within 300 miles or so of short-line interchanges where available traffic simply does not move by rail.

Individual attempts at self-help have been unproductive for the small railroads. In forging the 1998 "Railroad Industry Agreement" through the auspices of the two trade associations – the Association of American Railroads ("AAR") and the American Short Line and Regional Railroad Association ("ASLRRA") – it became apparent that different circumstances east and west of the Mississippi River reduced the result to the lowest common denominator, making it virtually meaningless. Only a handful of instances in which the Agreement has produced additional traffic have been reported by ASLRRA members. Early expressions of support by some Class 1 Chief Executive Officers for the concept of removing impediments to traffic growth quickly vanished in the hands of their own marketing departments. *See Public Views on Major Rail Consolidations*, STB Ex Parte 582, "Statement of Frank K. Turner, President, American Short Line and Regional Railroad Association" ("Turner Statement"), at 4.

Though rival Class Is were able to reach agreement with each other on trackage rights and other cooperative arrangements to facilitate the latest Western mergers and to apportion assets in the division of Conrail, they have paid little attention as a group to strengthening the fabric at the edges of the network and in many cases have actually encouraged it to atrophy. ASLRRA has articulated the principal seams that are showing in a supposedly seamless industry (*see Public Views on Major Rail Consolidations*, STB Ex Parte 582, Turner Statement), and illustrative examples of matters specific to the FMRS companies are discussed below.

An unanticipated consequence of the Staggers Act has been an extraordinary concentration of railroad market power. An unintended consequence has been a very uneven distribution of public-interest benefit in terms of price and service – as between large and small shippers, between inter-city corridors and rural branches, and between Class I railroads and short lines.

The scope of desirable rail accessibility clearly does not correspond with the scope of maximum profitability for the duopolists, and it is up to the Board to assure that the public interest is served by achieving a reasonable accommodation. FMRS is encouraged by the Board's speculation as to whether "...the time has come for us to consider whether we should revise our merger policy. . . with an eye towards affirmatively enhancing, rather than simply preserving, competition." ANPR at 3. The required balance will require a combination of small-railroad economics and flexibility, public-sector support, and more enlightened cooperation and acceptance of competition by the Class I carriers in terms of service, routing, pricing, and car supply. Shipper comments to the effect that rail no longer is a factor for most of their transportation requirements are a serious indictment of the progression into mega-railroads that has occurred to date in the deregulated environment.

FMRS and its counterparts welcome the Board's statement that it intends to address "...the important role of smaller railroads in the rail network." *Id.* The vulnerable periphery of the system where short lines operate is precisely where transportation options are most limited and enhanced rail-to-rail competition is most needed. *See generally* letters from shippers and the Cities of Clinton and Elk City attached as Appendix B. *See also* statement from Oklahoma Department of Agriculture attached as Appendix C.

Specific Concerns of FMRS

In agricultural regions such as western Oklahoma, country grain elevators see the following handwriting on the wall from the two remaining Class Is – reduced levels of interchange service, growing use of jumbo freight cars that are too heavy for track designed decades ago, phasing out of tariffs covering less than 100-car unit-train shipments, opposition to assembling unit trains from multiple origins, rate differentials between captive stations and those where rail competition exists, "out-of-the-market" pricing of traffic to destinations unfavorable to the trunk line, and a history of unreliable and seemingly arbitrary car supply. Many small granger railroads established in lieu of physical abandonment are being commercially abandoned by their supposed mega-railroad "partners."

FMRC-GNBC's combined market share of wheat (bushels moved by rail as a percentage of all shipments from elevators accessible to both carriers) was 59% in the four years preceding the BNSF merger (1992-95) and 48% in the four following years (1996-99). The worst share historically was just 32% in 1989, when the principal ratemaker effected major increases with disastrous results. The best performance, 66%, came in 1992 and is more representative of what FMRS management believes should be the norm. The inherent customer advantage of being a rail-served elevator is negated by pricing anomalies and service restrictions that diminish the available flow of rail traffic, causing precious short-line loadings to be diverted to the highways.

Service Deficiencies. FMRS is inclined to view merger-related service problems as temporary, if only because the shipping community cannot long tolerate substandard operating reliability. FMRC and GNBC have experienced a predictable reduction in service frequency at the Altus and Snyder interchanges (from daily to tri-weekly)[4] in the aftermath of the 1995 merger creating BNSF, in which the applicants forecast a 70% decrease in tonnage on the serving route. Post-merger service has been inconsistent.

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[4] This experience pales by comparison to the widely reported service failures that followed the UP/CNW, UP/SP and NS/CSX/Conrail control transactions.

The rail industry is moving toward formal interline service agreements between Class Is and short lines in an effort to improve interchange connections, but these understandings are unlikely to prove effective in the absence of meaningful financial penalties for non-performance. In March, ASLRRA suggested that short lines be paid damages for traffic they lose. *See Public Views on Major Rail Consolidations*, STB Ex Parte 582, Turner Statement, at 5-6. This is consistent with the position reportedly expressed by BNSF's Chairman at a conference in February, that shippers deserve compensation for service failures.

A far greater concern is persistent Class I indifference with respect to service priorities on carload merchandise freight and operating discipline in light-density territories. This lack of urgency seems to be exacerbated as the trunk lines become larger and further removed from their customers. Their emphasis is on maximizing single-line hauls, running long trains, minimizing crew starts, eliminating standby power, and avoiding intermediate switching wherever possible. Carload service suffers under these parameters. Transit times are unacceptably long and variable, and interchange times are unpredictable.

Local crews facing hours-of-service expiration often do not have time to stop to interchange with short lines. Inbound cars frequently bypass FMRC and GNBC interchanges at Altus and Snyder and are delivered a day or two later. A block of outbound grain hoppers interchanged by GNBC on March 6, 2000, did not turn a wheel toward the destination until March 28, 2000. *See* Appendix B, letter dated April 30, 2000, from Farmers Cooperative Exchange in Bessie, Oklahoma. The responsive service standards being set for customers by most short lines must be matched by improved trunk-line handling of less-than-trainload business if industry credibility with shippers is to be restored. Carload business is roughly two-fifths of Class I loadings and is the short lines' lifeblood.

Discriminatory Pricing. Short lines need to participate in industry growth as badly as their Class I connections, as they too have substantial capital needs to rehabilitate and upgrade physical plant. Nearly all have ample capacity to handle more traffic. The post-Staggers spin-offs began with zero-based budgets, so their opportunities for cost reduction are negligible. Most also have little ability to increase charges, and unit volume growth is the key to leveraging their fixed costs and generating cash flow for reinvestment. Despite agreed-upon per car "allowances" or "divisions," however, short lines are frequently pressured by the connecting trunk line to accept a reduced revenue share in order to generate new interline business.

A major competitive problem for short lines is the widespread practice of add-on pricing by the controlling Class I ratemaker. Some Class I carriers add all or part of the short line's revenue allowance to their "costs" to the junction when setting rates on interline movements, ignoring savings from the sale of the branch line to a carrier with lower costs. Sources familiar with line sales at two large trunk lines confirm that short line allowances consistently run about 70% of the corresponding Class I operating costs; *i.e.*, savings amount to 30%. Shippers served by many short lines therefore realize no benefit from these savings.

The add-on methodology works only in a captive situation when competition is absent. On many short lines, competition is absent because of contractual restrictions imposed on, and pricing authority retained by, the selling Class I carriers. In western Oklahoma, there is a marked differentiation between grain rates at Class I stations and those on short lines, apparently due to the "cost-based" approach described above. If the rates charged short-line customers are truly supportable by market conditions, then the Class I should raise rates at its own origins to the "market" level in order to maximize profitability.

Impressive rate reductions claimed by the Class I railroads as a beneficial result of the merger movement have not significantly accrued to customers served by connecting feeder lines. In contrast with carrier claims of dramatically lower grain rates, the nominal cost of shipping export wheat at Clinton is little changed from the mid-1980s.[5] *See also Public Views on Major Rail Consolidations*, STB Ex Parte 582, "Comments of U.S. Department of Agriculture," at 8 (claiming that the major reason for grain rate reductions has been the shifting of costs to shippers).

Most short lines depend on a preponderance of small shippers that do not have multiple-plant leverage to secure rate competition. Neither does the short line generate enough business to have any negotiating power with the Class I. Further, as discussed more fully below, routing options for short lines that could stimulate competition are often far more limited than the physical rail network would allow.

A common practice in grain is discrimination against short-line stations by the ratemaking Class I in favor of its own origins. The Class I makes or reduces rates from its own stations and declines to publish equal or similar rates from nearby short-line points, thereby distorting the natural drawing area for elevators served by short lines. Wheat rates no longer are published at all by the Class I ratemaker to any destination from the small GNBC stations of Imo, Drummond, Ames and Okeene, as their former short-line traffic has been dried up by publication

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[5] The response to a request made on May 3, 2000 for definitive historical rate information from BNSF's archive of publicly published wheat tariffs was deferred by BNSF until after the deadline for submitting these comments.

of more favorable pricing at nearby Enid, an inland terminal with competitive service from two Class Is. *See* Appendix B, letter dated April 17, 2000, from Farmers Elevator Company, Ames, Oklahoma. (When last published in 1998, the differential between Enid and Imo, only six miles apart, was 8% on traffic to the Gulf ports.)

The small railroads need either competitive, nondiscriminatory rates (determined on the same basis as nearby Class I stations) or freedom from the paper barriers that prevent them from offering competitive alternatives. *See* Appendix B, various shipper letters. Short-line revenue allowances should not be charged as a cost in pricing decisions, as the ratemaking carrier already is realizing a benefit from divestiture of the subject line. Even worse, a result is that short-line elevator customers are indirectly subsidizing competitors on the connecting Class I lines.

Competitive Blocks. Class I consolidations have been harmful to short lines and their shippers where the former operators of divested lines have demanded exclusive and perpetual rights to interchanged traffic. The divesting party typically retained pricing authority for all interline traffic and often demanded a competitive block on potential interchange with a rival carrier, creating "belt-and-suspenders" control over rates at short-line stations. That control is subject to abuse.

When performing a financial analysis to determine if a segment is a candidate for sale, the Class I must compare its avoidable costs against the proposed budget and per car fee of the new short line. The successor short line's per car fee generally is around 30% less than the selling railroad's avoided costs. By imposing contractual restrictions and retaining pricing authority, the selling Class I can anticipate at least keeping the same net contribution to revenue on existing traffic, assuming no change in rates. In doing these calculations, the Class I must examine the present value of both the expected retained revenues and the cost savings. Depending on the discount factor at the time, the present value of revenues and savings beyond seven years or so would be of relatively little consequence to the transaction.

Many who acquired branch lines from the Western Class I railroads granted pricing authority to the seller and accepted a competitive block in return for a representation that their short-line customers would be provided with "competitive prices."[6] The block typically takes the form of a restriction on physical access or a prohibitive financial penalty for interchanging traffic with the competitor. The barriers imposed on Class I spin offs do more than restrict routing options. They also result in higher rates for short-line customers than for comparable shippers on Class Is, especially those with access to more than one carrier. *See* Appendix B, letter dated April 4, 2000, from Cassidy Grain Company, Frederick, Oklahoma; letter dated April 17, 2000, from Farmers Elevator Company, Ames, Oklahoma; and letter dated April 18, 2000, from Tillman Producers Coop, Frederick, Oklahoma.

The reality for GNBC is that the block has not only served to assure continuing exclusivity of feeder traffic, but also has provided a protective shield for inordinately higher grain pricing at captive locations. Tariffs issued by the ratemaker for FMRC-GNBC stations starkly illustrate the premiums imposed on shippers not at a rail-competitive location or merely served by a connecting short line created to allow the Class I to shed the cost of branch-line operations. One such tariff imposes a 48% rate differential between the short-line origin and the seller's station only 66 miles away on a through move of 308 miles. In another, a short-line-served

[6] FMRS understands that term to mean rates that are consistent with the scheme published by the Class I for the same commodity in the same territory.

station between two stations on the same Class I line pays a premium of about $160. *See* Appendix B, letter dated April 18, 2000, from Farmers Co-operative Association, Snyder, Oklahoma. This practice depletes the small railroad's traffic base by drawing wheat away from its elevators to those served by the Class I. If the higher rates published for short-line points were truly capable of moving traffic, then the Class I should not be "discounting" rates at its competing locations nearby.

The fact is that FMRC-GNBC's rates are set to capture the surge of volume at harvest, when much of the crop moves immediately to market. Truck competition is negligible at that time. The short lines' market share is around 90% at harvest, but only 30% or so during the rest of the year.

The Board's mandate "...to promote a safe and sound rail system that runs smoothly and efficiently to provide service for rail customers" is not furthered by artificial barriers that either frustrate logical origin-to-destination routing or contrive to achieve it by captive, circuitous and costly means. The divesting carrier shouldn't have it both ways – i.e., captive traffic at premium rates. Removal of competitive blocks would stimulate traffic growth for the entire industry, such that there should be no losers. The plant manager of GNBC's largest shipper states that his facility could increase the total rail share of its traffic and justify investing in better loading facilities if access to more destinations were available via a second trunk line. Without the competitive block, GNBC would have unrestricted access to UP at Enid and Quanah and to WTJR at Frederick, giving GNBC's shippers significant routing (and likely price) options.

Another practice that should be discouraged is Class I refusal to allow a short line over which it has ratemaking authority to make a rate for business that is either new or that the

Class I cannot reasonably handle with another Class I or with a non-contiguous short line. An awkward situation arises under a competitive block when the blocked carrier calls with a new business opportunity or a competitive rate proposal. The carrier taking the initiative is disadvantaged whether the short line simply advises that the traffic is blocked or refers the inquiry to the blocking carrier so it can attempt to be inserted or to remain in the routing. It doesn't take long before the growth-promoting marketing calls from the "competing" Class I stop coming.

Routing Options. Prior to its merger with BN in 1980, the owner of GNBC's line, St. Louis-San Francisco Railway Company, was an intermediate hauler for much of its traffic and offered customers a variety of routing possibilities to many destinations via several connecting trunk lines. The merger movement eliminated this choice, leaving far fewer options for moving traffic by rail. Remedies afforded shippers by the Staggers Act have not been effective, primarily due to lack of an expedited handling procedure. The few cases brought forward to adjudication have languished in court for years, and little practical relief has ever been rendered.

Routing flexibility is a function of pricing policy as well as of the railroad map. In particular, grain movements are affected by deliberate premium pricing of certain business to force traffic to the merged Class I's most economically lucrative routes. Shorter hauls in truck-competitive markets and non-captive movements involving more than one trunk line are discouraged, and many shippers no longer think of the railroad as a multi-destination transportation resource. *See generally*, Appendix B, various shipper letters.

The ratemaker often publishes tariffs for "show" under which no short-line traffic ever moves unless the shipper is desperate. For example, interline grain originated on FMRC and GNBC has moved to destinations other than the Gulf ports only on rare occasions in the four years since the BNSF merger. The 26-car rate from Clinton to the Port of Catoosa, a barge transloading point and natural market for western Oklahoma wheat, is $1,488 per car for a 216-mile haul, compared with $1,800 for a 648-mile trip to Galveston; not surprisingly, no GNBC wheat has ever moved to Catoosa. The railroads obviously do not want to "support" their barge competitors.

GNBC experienced a reduction in theoretical competitive access as a result of the 1995 merger that created BNSF.[7] Although the ICC attempted to create a substitute for the lost access, the prescribed remedy has not afforded the intended routing flexibility. The ICC's solution has never been used because of a paper barrier making operation to the additional interchange point uneconomic. Further, the access to SP at Quanah, Texas never became a viable alternative because SP merged with UP shortly after it was granted. As a result, only a token amount of FMRC-GNBC's traffic has been interchanged with a trunk line other than the merger partners: 1.0% in 1998 and 2.3% in 1999.

Service Constraints

A. Pricing Policy. Shipper choice of volumes in which to trade is being reduced by the gradual disappearance of less-than-trainload rates for grain and concurrent prohibitions or restrictions on co-loading and multiple-switching to assemble unit trains. Many

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[7] GNBC had restricted access to three carriers reduced to restricted access to two carriers. FMRC suffered a similar reduction in access from three to two, but under the ICC's interpretation of the merger guidelines at the time, no relief was afforded.

rates in FMRC-GNBC's territory no longer are differentiated to reflect operating economics (singles are priced the same as a 110-car unit train).[8] Extraordinary incentives offered by the Western Class Is to promote construction of 100-plus-car unit-train loading facilities unilaterally invade short line markets, threatening carrier viability. Such mega-terminals will not work in the granger territory served by FMRS. Shippers with short spurs that are physically or financially unable to become unit-train loaders suffer severe rate penalties even though the serving short line is willing to perform extra work at its expense to deliver a unit train to the connecting Class I within the historically permitted loading time. *See generally*, Appendix B, various shipper letters. The short line's function is analagous to that of a shipper doing its own in-plant switching. Class I tariffs, however, effectively negate service capabilities that give short lines a distinct competitive advantage. The Class I should not care how a block of traffic to the same destination is assembled.

A profile of the 32 country elevators on FMRC-GNBC's gathering network clearly illustrates the negative implications of service based on "one size fits all" Class I system-wide promotion of 100-car grain trains and underscores the critical need for co-loading and multiple-switching to accommodate small shippers. Only nine locations are even able to handle in a single switch the 26-car units that have been the standard in western Oklahoma, and 15 have spurs holding fewer than the double-switch maximum of 13 cars. Most operators lack both physical and financial ability to extend tracks to accommodate longer strings of hoppers, and

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[8] For example, the rate to the Port of Catoosa discussed above is the same for one car or 110 cars.

nothing is likely to change the crop-yield experience in Oklahoma.[9] *See generally*, Appendix B, various shipper letters.

B. New-Generation Equipment. The four remaining merged Class I mega-carriers have the economic power to impose new equipment standards on the entire industry. Introduction of 286,000-pound loaded railcars poses a particular threat to small railroads serving rural territories, where much of the existing infrastructure was designed a century ago for shorter trains and far less taxing weights than are the rule today. This problem can be addressed in three fundamental ways: (1) accept further loss of lines that are incompatible with the new standard and shift their traffic to the highways, (2) rebuild substandard track and bridgework to accommodate the growing fleet of oversize cars, or (3) avoid major capital outlays for infrastructure and obsolescence of existing serviceable cars by utilizing rates to perpetuate present technology on rural branches.

The economic benefit of oversize cars with about 10% greater capacity accrues entirely to the major railroads and is detrimental to their short-line connections, which have no leverage to reach a workable accommodation without regulatory or political intervention. Most short lines are paid on a per car basis, and a 10% reduction in cars handled translates into a reduction in revenue. At the same time, maintenance and usage costs will increase. One independent study has estimated that use of the heavier cars by small railroads with track conditions characteristic of most branch lines will cause a 9% increase in annual maintenance expenses, and car-hire costs of the new equipment obviously are higher than the older 263,000-

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[9] Longer term, there may well be greater need to move smaller volumes if farmers elect to devote their acreage to specialized strains of wheat.

pound fleet. The apparent cram-down of such costs on small railroads with limited influence and resources, and their shippers, speaks to the need for STB attention to this issue. Unilateral imposition of a new equipment standard will further disadvantage the small carriers and their shippers.

Car Supply. Equipment availability is a critical element of competition for most short lines. *See* Appendix B, letter dated April 4, 2000, from Cassidy Grain Company, Frederick, Oklahoma; letter dated April 27, 2000, from Farmers Co-operative Association, Clinton, Oklahoma; and letter dated April 18, 2000, from Tillman Producers Coop, Frederick, Oklahoma. Some Class Is will not permit a connecting short line to acquire its own freight cars and insist upon the exclusive right to supply rolling stock at their discretion. Under car-hire deprescription, small railroads realistically are precluded from purchasing equipment for the needs of their shippers without assurance that it can be utilized continuously. Despite a contractual supply commitment, GNBC elevator customers have gone as long as four months without having legitimate car orders filled while the hopper fleet was deployed to the northern states. This problem could worsen if BNSF merges and the demands for its car fleet extend even farther from western Oklahoma.

Public Investment. Another point of legitimate public-interest concern that is often overlooked is brought to mind by the Board's reference to "...imperil the significant public investment in [port] facilities...." ANPR at 6. This comment pertains to rail infrastructure as well. ODOT was a pioneer in the preservation and rehabilitation of trackage deemed to be essential to the State's transportation infrastructure by establishing a revolving fund. Over the past 20 years, the State has invested over $43 million on various line segments to maintain shipper access to one or both of the remaining Western trunk lines. This investment, which has no capital cost to the Class I beneficiary, does not seem to play any part in the carriers' thinking as to competitive rates and service. A large shipper at Lone Wolf on FMRC's State-owned line, for instance, pays a 13% premium versus Altus, 26 miles away on BNSF, on 589-mile shipments to Galveston. *See* Appendix B, letter dated April 24, 2000, from Planters Co-operative Association, Lone Wolf, Oklahoma; and letter dated April 21, 2000, from Sentinel Farmers Coop, Sentinel, Oklahoma.

Recommendations

Based on the foregoing discussion, FMRS recommends the following changes to the Board's major rail consolidation procedures that are currently set forth at 49 C.F.R. §§ 1180.0-1180.9.

(1) Add to §1180.1(c) *Public interest considerations:*

In determining whether a transaction is in the public interest, the Board shall find the following:

(a) Short lines provide an operational and administrative means of aggregating small shippers, and in general, short lines should be treated as shippers and not as competitors of the applicants.

(2) Add a new subsection:

The Board has determined that certain classes of conditions should be imposed in all major rail consolidations because the public benefits from such conditions outweigh any lessening of the benefits to the applicants or the public. These conditions are:

(a) Applicants shall agree to terminate immediately all competitive blocks as they relate to new traffic (traffic not currently moving by rail) and those that are more than seven years old, and to terminate all other competitive blocks on their seventh anniversary.

(b) Applicants shall grant all short-line (Class II and Class III) carriers haulage or trackage rights, at commercially reasonable rates, to the nearest interchange with another Class I carrier, not to exceed 100 miles and without application of any competitive blocks.

(c) Applicants shall permit two short lines to make rates with each other if their junctions with the applicants are between Class I terminals or otherwise within 300 miles. Applicants shall handle the intermediate switch by haulage, or grant trackage rights, at commercially reasonable rates.

(d) Applicants shall allow connecting short lines to make rates for new interline business from origins or to destinations within 300 rail miles of the short-line interchange. Applicants shall provide commercially reasonable revenue requirements on a freight-all-kinds basis for this purpose.

(e) Applicants shall not exercise any ratemaking authority to publish tariffs that effectively deprive shippers of service benefits offered by connecting short lines, including multiple switches and co-loading.

(f) In exercising any ratemaking authority, Applicants shall establish rates at short-line points consistent with their rate scheme for stations in the same gathering area for the same commodity.

(g) Applicants shall reimburse short lines for demonstrable damages, such as lost revenues and increased car hire, that result from service failures as measured by the service levels set forth in the application or under any private interchange service agreements between the parties.

(3) Add a new subsection establishing an expeditious appeal process for determination of alleged violations of merger conditions.

Conclusion

The Board has in various proceedings recognized the vital role that short line railroads play in preserving rail service options for shippers. However, short lines, typically operating on the fringe of the national network, do not have the same opportunities as Class I carriers to respond to proposed mergers through strategic alliances. Their ability to respond is often further limited by paper barriers imposed, pricing authority retained, and car supply limitations set, by the Class I carrier that spun them off.

Special merger guidelines should be adopted by the Board to protect short-line revenues and the ability of these small businesses to provide competitive service for their customers. The 500-odd short lines represent a vehicle which the Board can employ to extend competition to fragile fringe areas throughout the country. This action would strengthen the fabric of the entire system and generate more business for all participants. The recommendations set forth by FMRS herein address this opportunity and should be considered by the Board for new merger guidelines.

Respectfully,

WILLIAM P. QUINN
ERIC M. HOCKY
GOLLATZ, GRIFFIN & EWING, P.C.
213 West Miner Street
P.O. Box 796
West Chester, PA 19381-0796
(610) 692-9116

Dated: May 15, 2000

Attorneys for Farmrail System, Inc.
and its subsidiary railroads

VERIFICATION

I, George C. Betke, Jr, Chief Executive Officer of Farmrail System, Inc., verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing.

Executed on May 15, 2000.

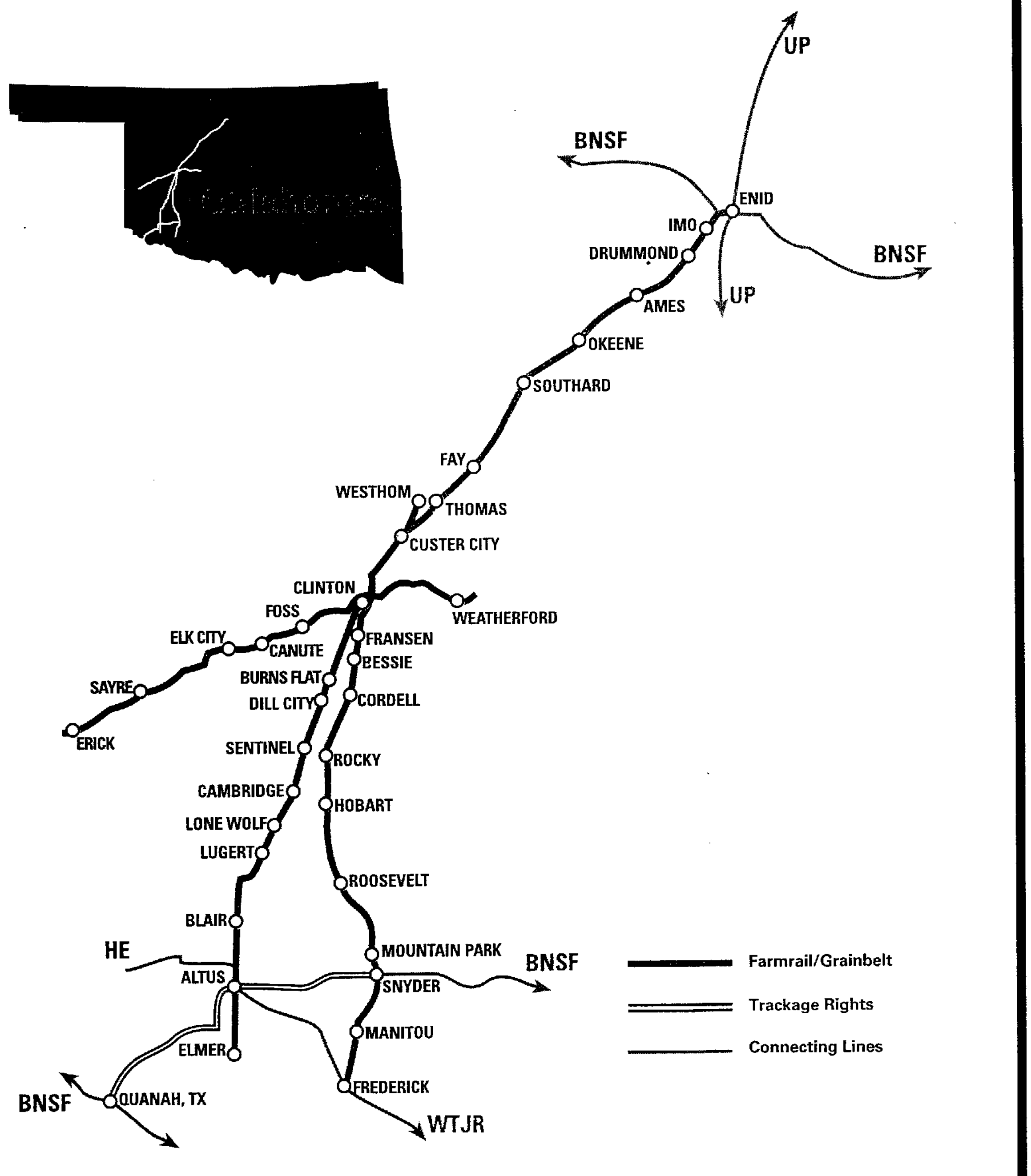
George C. Betke, Jr.

George C. Betke, Jr.

Appendix A

Map

System Diagram



Farmrail Corporation (FMRC)

Miles	Stations and Facilities		
18.1	Weatherford, OK		P-R-T-Y
0.0	Clinton		I-W
13.6	Foss	Sunbelt	
21.0	Canute	Division	T
28.6	Elk City		P-R-T
45.6	Sayre		C-T-Y
60.2	Erick		C-T
22.2	Westhom, OK		R-T
12.8	Custer City		P-T
0.0	Clinton		I-P-R-T-W-Y
17.3	Burns Flat		P-W
18.9	Dill City		
27.7	Sentinel		T
33.8	Cambridge	Orient	
39.9	Lone Wolf	Division	T
46.6	Lugert		
56.5	Blair		
66.3	Altus		I-R-T-Y
77.3	Elmer		

Grainbelt Corporation (GNBC)

Miles	Stations and Facilities	
0.0	Enid, OK**	I
6.6	Imo	T
11.5	Drummond	T
21.0	Ames	T
32.5	Okeene	P-R-T
43.7	Southard	T
64.0	Fay	
72.4	Thomas	P-T
82.7	Custer City	P-T
94.9	Clinton	I-P-R-T-W-Y
97.8	Fransen	P
104.3	Bessie	T
111.1	Cordell	T
121.7	Rocky	T
131.1	Hobart	P-R-T
143.8	Roosevelt	T
155.8	Mountain Park	T
158.4	Snyder	I-T-W-Y
169.3	Manitou	
177.7	Frederick	I-P-R-T
0.0	Snyder, OK	I-T-W-Y
58.9	Quanah, TX**	I-W

Reference:

C	Contract-carrier service	W	Wye track
I	Interchange track	Y	Switching yard
P	Industrial park site		
R	Truck-transfer ramp	*	Out of service
T	Team track	**	Via trackage rights

Appendix B

Letters from Shippers and Cities

COOP

FARMERS CO-OPERATIVE ASSOCIATION
P. O. BOX 308
SNYDER, OKLAHOMA 73566
(580) 569-2342
(580) 569-2343

April 18,2000

Mr. Vernon A. Williams
Surface Transportation Board
U. S. Department of Transportation
1925 K Street, N.W., Suite 500
Washington, DC 20423

Dear Board:

Our grain elevator at Snyder, Oklahoma is switched by the Grainbelt railroad. We also are on the Burlington Northern Santa Fe line from Oklahoma City into Texas, and we were served by Burlington before their connecting branch was sold to Grainbelt in the late 1980s.

Our members were told then that after the sale it would be like we were still on the Burlington, except that the train and its crew would be Grainbelt's. They said the service should be better, and it has been. What we don't understand, though, is what has happened to the rates. Our rate to send 26 cars to the Gulf now is $1,700. On each side of us is a Burlington station with lower rates. Altus is 23 miles closer to the market by rail, and its rate is $1,530. Lawton is 34 miles farther away, and the rate there is only $1,550. Burlington sets the rates for Grainbelt, and I figure we're paying about $160 a car more than we should.

Grainbelt hasn't been able to get this problem fixed. We are only 19 miles away from another route to the Gulf via Union Pacific, but Grainbelt isn't allowed to do business with them. If we could use UP too, the rates might become more competitive. At Altus, where there is real rail competition between BNSF and UP, the Gulf rate is lower than anywhere else around.

We need some way to keep Burlington from gouging us and our farmers. Either the rates need to be regulated again, or we should have a choice to route our wheat by UP as well as Burlington.

Another problem we have is the 100 car trains Burlington wants to run to the Gulf. Our spur only holds nine cars since Burlington tore up part of it, so we need a triple switch just to load the 26 car units that have been common around here. Burlington doesn't want Grainbelt to do this so we can get the lower unit train rate. Why should Burlington be able to control what the Grainbelt is willing to do for us?

The bigger Burlington gets, the less they care about places like Snyder, Oklahoma. They only come through every other day in each direction now, where there used to be two trains a day each way. It doesn't ever seem to get better for rural areas like ours.

Sincerely yours,

Larry Bro

COOP

FARMERS COOPERATIVE EXCHANGE

P. O. BOX 158
BESSIE, OKLAHOMA 73622
(405) 337-6343

April 30, 2000

Mr. Vernon Williams, Secretary
Surface Transportation Board
United States Department of Transportation
1925 K Street, N.W.
Washington, D. C. 20423

Dear Commissioners:

Burlington Northern Santa Fe, the big railroad trying to merge again, talks a lot about their superior service while reminding everybody how badly their competitor, Union Pacific, messed up its merger. BNSF had a lot of glitches too, but UP's problems got all the attention at the time.

Whatever happened back then, I can tell you that BNSF's service now in our area is terrible. I released a 26-car train of wheat that our short line, GNBC, delivered to BNSF on March 6. It never moved any farther until March 28. It just sat there. What kind of service is that? We deserve better for the rates that we pay.

The BNSF rates in our area are not competitive to anyplace but the Gulf ports. If we want to do business somewhere else, we have to truck the wheat. GNBC loses a lot of traffic to do the trucks, and we worry it may not be able to stay in business. We would much rather load hoppers than the trucks.

Now BNSF wants to move grain in trains of over 100 cars. That won't work in western Oklahoma. Our elevators aren't big enough, and our spur tracks aren't long enough to load such big trains. We need single car, 10 car and 26 car rates and the right to co-load with other elevators.

Please keep the problems of us small shippers in mind as you decide what to do about future mergers.

Yours truly,

Randy Wanzer

Randy Wanzer
Manager

Goodpasture, Inc.
P.O. Box 912
Brownfield, Texas 79316

Mr. Vernon A. Williams
Secretary
Surface transportation Board
U.S. Department of Transportation

April 19, 2000

Dear Mr. Williams:

Goodpasture, Inc. operates an inland terminal elevator at Enid, Oklahoma, and country elevators at Clinton and Roosevelt, Oklahoma on the GNBC rail line, which belonged to Burlington Northern Railroad. Up until 1995, our Clinton facility had access to both BN and Santa Fe railroad, which merged in that year. The Roosevelt facility always had only BN routing and BNSF now controls rates and car supply exclusively at both locations.

We are very concerned about the clear trend toward moving grain like coal in unit trains of 100 cars or more. The country elevators can handle only 7 and 12 cars at a time, so we need additional switching to make up even the 26 car units that have been customary in western Oklahoma. Cooperative loading with other elevators is difficult because the wheat usually isn't going to the same consignee and the same destination, and timing is hard to coordinate.

The low rates for 100-car trains obviously are intended to get people to build more modern loading facilities. With the small volumes elevators in this area handle, it makes no sense to spend millions of dollars to move two or three of those trains per year. We do not understand why the railroads are willing to move carload lots of all kinds of other freight, but do not want to have anything to do with one, five, or ten car rates on grain.

The big railroad keep pushing cost down on us for faster load outs, shipper owned hopper cars, shuttle commitments and such that work against the smaller player on the outskirts or the system. All the benefits seem to be going to the larger companies who can commit to big volume and regular movements.

We must count on the STB to see to it that small businesses like ours are not forgotten tin the mad rush to merge. We need rail service that is more competitive to more places. Grain can go anywhere by truck, but all the railroads seem to care about is the longest possible haul in a unit train. That is obviously the most profitable way to move any commodity, but very little grain in the Southwest is going to move by rail on that kind of "take it or leave it"basis.

Sincerely,
Mike McDonald
Mike McDonald

COOP

FARMERS ELEVATOR COMPANY

GRAIN FERTILIZER CLEANING FEED FARM SUPPLIES
PETROLEUM PRODUCTS TBA CUSTOM FERTILIZER APPLICATION

AMES ELEVATOR
580/753-4212
P.O. Box 128
Ames, OK 73718

OIL & GAS DIVISION
580/753-4220
P.O. Box 67
Ames, OK 73718

DRUMMOND ELEVATOR
580/493-2212
P.O. Box 56
Drummond, OK 73735

APR 20 REC'D

April 17, 2000

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
U.S. Department of Transportation
Mercury Building
1925 K Street, N.W.
Washington, DC 20423

Dr. Mr. Williams:

I am writing about the Board's proceeding concerning railroad mergers-Ex Parte No. 582. Our small country elevator is located on the Grainbelt rail line, 21 miles from Enid, Oklahoma. This track was sold to Grainbelt by Burlington Northern in the late 1980s, and we were told that things would stay pretty much the same except that the trains would be run by Grainbelt. The service has been better, but everything about shipping wheat has changed. We haven't loaded a carload of wheat for several years and now use the railroad only to bring in fertilizer.

We used to rail our grain to Enid, either to a mill or to the terminal elevators under transit rates. Transit was elimated some time ago, and for a while we had rates for direct shipment to the Gulf. After the last merger between the Burlington Northern and Santa Fe, they stopped publishing any wheat rates at our station, so we now truck all our grain to Enid or beyond to places like the Port of Catoosa. Grainbelt also connects with the Union Pacific Railroad at Enid, but the BNSF won't let them interchange grain with the UP.

We would rather load hoppers than trucks. Even if our spur could hold more than 13 cars, though, we couldn't take advantage of the unit train rates without combining our loads with other elevators. BNSF never allowed that to happen on the Grainbelt line near Enid.

Western Oklahoma depends heavily on wheat. If Grainbelt isn't able to handle most of the crop because it is hamstrung by discriminatory rates and rules, we wonder about its future. This employee-owned company has done a good job, and it should be able to serve the needs of businesses like Farmers Elevator Company in Ames so the railroad and its elevator customers aren't forced out of business. Railroad mergers are supposed to be good for shippers and shouldn't be allowed to destroy small businesses and our way of life in western Oklahoma.

Thank you.

Yours truly,

Howard Delaplane
Manager

cc: Farmrail
Rodney

GRAIN, FEED, SEED
FARM SUPPLIES
ANHYDROUS AMMONIA
CUSTOM FERTILIZER
APPLICATION
FUEL
DRY AND LIQUID
FERTILIZER

FARMERS CO-OPERATIVE ASSOCIATION
"THE BUSINESS THE FARMERS OWN"
P. O. BOX 271
HOBART, OKLAHOMA 73651

ELEVATORS AT
HOBART
Phone 405-726-3353
Fax 405-726-5945
ROOSEVELT
Phone 405-639-2262

April 27, 2000

Mr. Vernon Williams, Secretary
Surface Transportation Board
U. S. Department of Transportation
1925 K Street, NW Suite 500
Washington, D. C. 20423

Dear Mr. Williams:

Please add this letter to your file for your proceedings Ex Parte No. 582 about the effects of big railroad mergers.

We are like many grain elevators in western Oklahoma. We are unable to extend our siding track because of short distances to major highways and other obstructions. Because of this, we can load only 11 cars at a time at Hobart and 18 cars at our Roosevelt branch elevator a few miles away. Combined, we can load 29 without a switch and within the time limits of the railroad.

Our serving short line, the GNBC, is willing and able to combine loads from these nearby locations and even give us more than one switch if needed. This does not create an additional burden to the main line railroad because the short line delivers the cars to a pick up point where the main line receives the cars as a complete 26 car unit. The main line railroad that controls GNBC's traffic writes its tariffs to prohibit 26 car trains from elevators that can't spot 26 cars at a time. This restriction prohibits the short line from providing a needed service and prevents us from receiving the 26 car rate. We need the 26 car rate in order to compete with truck freight and nearby grain elevators that are served by more than one main line. If the main line receives the cars in the 26 car block that they want and in the time that they want, why does it matter how the unit was put together?

We need rules that take into account the needs of short line railroads and facilities like ours. We need rates that are competitive and to alternative destinations so we have the freedom to reach the best market for our farmers. There are noncompetitive rates published that never move a carload of grain. We have a high quality of wheat that would bring a better price if we could only get competitive rates to flour mills on the west coast or flour mills in the upper midwest. Now, all we can viably ship wheat to is the Texas gulf for export. And the export market has not been attractive for the past few years. There are many possibilities.

Thank you for any help that you can give us in relieving this unfair situation and unwillingness of large main lines to work with small shippers. They do not seem to realize the importance of the railroad to rural Oklahoma communities.

Yours truly,

Keven Day

Keven Day
General Manager

Farmers Co-operative Association

405 323-1467 — P.O. Box 608
Clinton, Oklahoma 73601

4-27-00

Mr. Vernon Williams
Secretary
Surface Transportation Board
U.S Dept. of Transportation
1725 K St., NW Suite 500
Washington, DC 20423

Dear Sirs:

We here at the Clinton CoOp Association depend heavily on rail service to move our annual wheat crop. We currently have about 1,250,000 bushels of grain storage; almost all of it shipped by rail (usually a little over 300 cars per year). For the last several years, our switching has been done by GNBC; which runs to Enid on the north and to Snyder on the south (the old Burlington line).

Until five years ago we had competitive service from both BN and Santa Fe. The competition was, we felt, healthy and we were usually able to secure rail cars at a reasonable rate and as we needed them because of it. When they merged, competition was eliminated, along with many of our options and choices.

We now ship mostly by GNBC to Enid. Burlington doesn't offer rates to Enid like before; and the rates they do publish are confusing and don't seem to be of much benefit to us. For example, we are about halfway between Enid to the north and Altus on the south; toward the Gulf. But Enid's rate to the port is about 2 cents a bushel cheaper than ours—and Altus' is 8 cents cheaper. If we sent our wheat to Fort Worth, we would pay almost half as much again as Enid or Altus does.

The price of wheat is already far too low to return our producers a significant margin of profit from their crop. Each additional cent we must pay for freight is a cent less that we can pay to our producers, many of whom are already experiencing financial crisis.

Competition has always been a mainstay in American business. It ensures maximum efficiency and performance; and the fairest return to customers. Just because we are on a short line and have no competing rail lines seeking our business should not mean that our producers have to pay a penalty in reduced prices and services.

Sincerely

Marty Pyron
General Manager

GIN AND ELEVATORS
FEED AND FERTILIZER
PHONE 405-846-9008

COOP STATION
L. P. G. – GAS – DIESEL
PHONE 405-846-9079

PCA
PLANTERS CO-OPERATIVE ASSOCIATION
P. O. BOX 8
LONE WOLF, OKLAHOMA 73655

April 24, 2000

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
U.S. Department of Transportation
1925 K Street, Suite 500
Washington, D.C. 20423

Re: Ex Parte No. 582

Dear Mr. Williams:

When the railroads were deregulated, the idea was to let market forces work to promote competition so traffic would be stimulated and costs reduced, allowing some savings to be passed on to shippers in the form of lower rates. The huge railroads have made a big point of stating that rates have come down substantially since 1980. While that may be true nationally, rate and service benefits have not reached places like western Oklahoma.

Free-market forces work only when there is real competition. Now that only two major railroads are in the West, there is no real competition for grain. Each one respects the other's turf, and rate spreads have widened between competitive points and those that are captive. Lone Wolf is a perfect example. Our rate for export shipments to the Gulf Coast ports is $1,725 a car, while 26 miles away at Altus (where BNSF and UP both publish tariffs) it is only $1,530. Our farmers are penalized 13% for being captive to one carrier.

Because of the extraordinary consolidation that has taken place in the rail industry, rates are not dictated by competition but by the extent to which the originating station is captive. To prevent traffic from being unfairly driven to mainline stations, we think rate differentials for grain should be limited to 0.1% for each mile distant from the rail-competitive basing point. In our case, the maximum Lone Wolf rate would be 2.6% above Altus, or an additional $40 per car. The reasonableness of this proposal is shown by BNSF's rate at Lawton, 57 miles from Altus, which is only 1.3% higher ($20 per car).

The grain gathering business has natural drawing areas and market outlets. The rates I have described distort the local competitive situation in favor of the railroad's view of how the market should work. Rate is the tool it uses to influence which elevator the grain goes to and dictate how it leaves and where it goes. The railroad maximizes its profit at the expense of our members, who really are left with only one outlet for their product.

We are opposed to future mergers. The duopoly we now have in the West doesn't work, for their competition is more theoretical than real. They don't invade each other's territory. Since it is hard to go backward, the best solution would be for our short line to have access to both BNSF and UP. Then the rate problem should take care of itself.

The southern Great Plains are a lot different than North Dakota and other northern grain states. The big railroads shouldn't try to move our grain the same way they can in places where yields are greater, elevators are larger, and railroad track is heavier than it is here in Oklahoma.

We welcome the fact that the STB finally is taking a hard look at the competitive realities we face.

Sincerely yours,

Kenneth Hahn
General Maanger

APR 24 REC'D

Sentinel Farmers Coop

P.O. BOX 70
SENTINEL, OK 73664
PHONE (580) 393-4372 FAX (580) 393-4514
CHARLIE SWANSON, GENERAL MANAGER

April 21, 2000

Ms. Linda J. Morgan
Chairman
Surface Transportation Board
United States Department of Transportation
1925 K Street, N.W.
Washington, D.C. 20423

Subject: Ex Parte No. 582

Dear Chairman Morgan:

Our grain elevator shipped 193 carloads of wheat by rail last year and received 14 loads of fertilizer. Sentinel is on a former Santa Fe branch line that had been neglected for years until it was bought by the Oklahoma Department of Transportation at the end of 1992. Since then it has been run by Farmrail, a local employee-owned company, and the service has improved dramatically. We get switched during the harvest rush when we need it instead of once a week when the Santa Fe train would wander through. As a result, we do a lot more business with the railroad than we used to, and the local trucker is not so happy.

Because of the traffic increase at Sentinel and from other elevators on the line, in the last three or four years the ODOT has made a major investment to improve the track. We understand that the state supplies ties and other materials and Farmrail gets them installed. In any case, the track is in much better shape, and we have been moving 26 car trains without a safety problem. What worries us, though, is that the BNSF, which publishes the tariffs for our line, now is talking about 110 car unit trains that obviously are far too big for us to handle even if we cooperate with other elevators on the line. Worse yet, the track still has light rail that was laid back before 1910, and I don't think it will take either big trains or the new jumbo cars.

Taxpayers have invested a couple of million dollars to make our line usable for the 26 car trains that have been the standard in this area. If the tariffs change to bigger units, then either that investment will be wasted and we all will go under or the ODOT will have to spend still more to upgrade the track. Why can't they continue to handle our traffic the way it is now?

The small country elevator is getting the short end of the stick. We were told that lines were being turned over to small railroads like Farmrail so we would have good service after the big railroads merged. Now it seems like they are making rules that will lead to abandonment anyway. I object to that as both an elevator operator and a taxpayer.

Yours truly,

Charlie Swanson

Charlie Swanson
Sentinel Farmers Coop, General Manager

Tillman Producers Coop
214 SOUTH 7TH P.O. BOX 929 FREDERICK, OKLA. 73542
PHONE 580-335-2107 FAX 580-335-2926

April 18, 2000

Mr. Vernon A. Williams
Secretary, Surface Transportation Board
1925 K Street, N.W.
Washington. D.C. 20423

Dear Mr. Williams

Our country elevator is served by two local railroads, Grainbelt and the W.T.J. Burlington Northern Santa Fe controls Grainbelts rates and car supply, and Union Pacific does the same for the W.T.J. While this should be a good situation for us , competition doesn`t seem to be what we expected.

BNSF`s rates are always higher than UP`s ,enough so we use the the UP shortline whenever we can because of rates. The problem is that once harvest is over or at the end of harvest the UP doesn't have any cars ,so in most years we wind up using BN cars to finish harvest and and to ship wheat the balance of the year.UP is only competitive when they have a car surplus and BNSF gets the business when UP doesn't want it. Even though we have two carriers they do not get in each others way. Is this how competition is supposed to work?

We would like to see the two short lines combine their switching service and create direct access to both the BNSF and the UP ,but we understand there are restrictive traffic blocks. Many carloads of Oklahoma wheat could move to the Gulf, if the big railroads saw enough carloads to compete for our business.

Even though the railroads are deregulated, they seem to be strangling in their own company regulations. We think there would be a lot more rail traffic for everybody if all the blocks were removed so there could be some real competition.

Regards, Phil Whitworth

Phil Whitworth
General Manager

MEMBER:
Oklahoma Grain & Feed Ass'n.
National Grain & Feed Ass'n.
Texas Grain & Feed Ass'n.
American Seed Trade Assn.
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April 4, 2000

Mr. Vernon Williams, Secretary
Surface Transportation Board
U.S. Department of Transportation
Mercury Building, Suite 500
1725 K Street, N.W.
Washington, D.C. 20423

File: STB Ex Parte No. 582 (Sub-No.1)

Dear Mr. Williams:

Our grain facility is in one of the few remaining Oklahoma towns served by two railroads. Both are short lines. Grainbelt operates a line that once was part of the Burlington Northern system, while Wichita, Tillman & Jackson leases one owned by the State of Oklahoma that connects the Union Pacific. This should be an ideal location from the standpoint of rail transportation.

The truth of the matter is that we use trucks a lot. We have other elevators on both lines, but loads from them can't be combined because each short line isn't allowed to give grain traffic to the other one. Also, the two major railroads that control the tariffs want the traffic in 25 of 26 car minimums, and now they are talking about running 100 car trains to the port terminals. this is ridiculous when trains are put together one car at a time. They seem happy to deliver a single car of fertilizer , but they want the wheat to go in long strings.

In addition, our trucks are available all the time, but we have trouble getting railcars once the harvest is over in June. The trucks can make a turn at any corner and go anywhere, while the railroads obviously don't want to take our wheat anywhere but the Gulf. So we use trucks.

It's good that the STB is reconsidering its railroad merger policy, but it may be too late. So much damage has been done by past mergers that it will be very hard to restore the kind competition that will help our situation.

Yours truly,

William M. Cassidy

William M. Cassidy

Frederick, Hollister, Manitou
Grain, Feed, Seed, Fertilizer, Ag Chemicals, Custom Application, Fuel, Excavation
Storge Capacity 2,200,000 Bushels

GUY HYLTON, City Manager
STEVEN L. HOLLOWAY, City Attorney

TERESA MULLICAN, Mayor

CHERYL SIPES, City Clerk
DORIS MUSIC, City Treasurer

CITY OF ELK CITY

"Gas Capitol of the World"

P.O. BOX 1100
ELK CITY, OKLAHOMA 73648

CITY COMMISSIONERS
Bruce Byerly - Ward 1
Basil Weatherly - Ward 2
Don Wham - Ward 3
Roy Burson - Ward 4

April 26, 2000

Vernon A. Williams
Secretary
Surface Transportation Board
U.S. Department of Transportation
Mercury Building, Suite 500
1725 K Street, NW
Washington, D.C. 20423

Re: Ex Parte No. 582

Dear Mr. Williams

I am the Economic Development Director for a city in the "central corridor" of western Oklahoma, namely Elk City. Also included in this "corridor" are the cities of Weatherford and Clinton. This population cluster has historically been dependent on abundant Anadarko Basin hydrocarbon reserves, dry-land agriculture, and retail functions. My mission is to assist in diversifying this fragile economic base.

In a sparsely populated rural area once described by John Steinbeck as "the dust bowl of America," our success has been based on a mid-continent location and sound transportation infrastructure. The three cities are situated east west along Interstate 40. They have easy accessibility to Oklahoma City, three municipal airports accommodating private aircraft and a regional railroad that provides exceptional service. These features were paramount in the decision-making matrix that caused American Milling Co. Railcar Repair Division, Bar-S Foods Co. Distribution, Doane Pet Care and Daimler-Chrysler Freightliner Division to locate in this area. Each of these companies have made a significant financial contribution to the tax base of these communities and provided much-needed jobs. All of the foregoing companies sited next to the railroad for good reason.

Those of us in the outlying parts of the country must compete with urban areas for new industry. It goes without saying that the urban areas have a much greater war chest and competition is fierce. A pro-business environment here isn't enough. We need, among other things, the competitive rail options that have disappeared in rural America because of the mergers that have all but done away with competition. The 1995 Burlington Northern- Santa Fe merger caused our locally based railroad, Farmrail, to lose a second connection.

This merger left western Oklahoma captive to only one connection. Though Farmrail could connect with the Union Pacific at Enid, OK, it is restricted from doing so except for places not reached by BNSF. As I hope you can see, this severely limits routing choices available to our shippers. I understand that less than 3% of Farmrail's traffic is exchanged with UP. That isn't meaningful competition.

Another merger-related problem is reduced service to what had once been Farmrail's most active junctions on BNSF's Oklahoma City-Quanah, TX line. BNSF had predicted a 70% decline in each direction. Even though Farmrail will switch whenever necessary, it's a extremely hard sell when an industrial prospect realizes that poor connecting services makes our location much less appealing. We would be much better off if the small railroads ran all of the country's branch lines.

I am also questioned about intermodal transportation. Products like packaged meat and dry dog food moving to distant markets like the West Coast could take advantage long-distance rail economics and the flexibility of trucks at the destination. The problem is that there is no transloading center within reasonable distance. Farmrail tells me that it is impossible to get a regular supply of flat cars, that BNSF must approve any cars it might acquire, and that the BNSF doesn't stop its long-distance trailer-carrying trains at the Enid, OK junction. Under those circumstances, it is quite evident that shippers in this area are denied the intermodal option also.

We desperately need a viable railroad to sustain and broaden our economic base. We also need more choices. If the railroad could offer more choices, it seems to me that it should be more viable. Those who realize the importance of transportation to regions like ours, such as Representative J.C. Watts, know that small railroads like Farmrail can provide fair, and more importantly real, competition if allowed to reach both of the Western carriers. I think there would be more traffic for everybody, and most assuredly make my job much easier.

Thanking you in advance, I remain

Sincerely

Richard L. Adams
Economic Development Director

Don Rodolph
Mayor
Chris Crabtree
Councilman
Dale Jones
Councilman

CITY OF CLINTON
THE HUB CITY
OKLAHOMA

Bob Smith
Councilman
Gene Catlett
Councilman
Bill Galletly
City Manager

May 8, 2000

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1725 K Street, N.W.
Washington, DC 20423

Dear Mr. Williams:

Please accept these comments as part of the record in your proceeding Ex Parte No. 582 concerning the effects of railroad mergers.

Clinton is properly known as the "Hub city of Western Oklahoma." It is situated on a main transcontinental highway, I-40, lies in the center of a large trade away from metropolitan Oklahoma City, was among the few Oklahoma towns served by three major railroads, and has its own municipal airport. As rural communities go, we consider ourselves very fortunate.

Over the past 20 years, though, railroad bankruptcies and mergers have not helped our ability to survive and grow commercially. We lost a direct long distance route east and west after the Rock Island went out of business in 1980 and then lost the Santa Fe in the early 1990s. Some of their track now is run by our hometown railroad, Farmrail, which bought the old Frisco line that now gives us our link to the national rail network. So where Clinton once had three large competing railroads and many routes to the rest of the U.S., just one remains. Unfortunately, when the last merger happened in 1995, the Interstate Commerce Commission allowed us to become captive to Burlington Northern Santa Fe.

I have served as Mayor of Clinton since 1988 and have been personally involved in industrial development efforts and can tell you that the railroad is an important asset to Western Oklahoma. It would be more important if we still had three different railroads or if Farmrail had at least one more connection with a big railroad. Companies like Doane Products, which has a new pet food plant here, would like to be able to buy ingredients from anywhere, not just sources on the Burlington. Likewise, our local co-op used to have two ways to move wheat to several markets and now can only go by Burlington. Here on the "frontier," we need more choices to compete, not less.

Please bear the problems of outlying areas in mind as you debate the ground rules for any more mergers. I only wish we could turn the clock back a bit to improve our competitive access

Very truly yours,

Don Rodolph

Don Rodolph
Mayor

P. O. Box 1177 Clinton, Oklahoma 73601 415 Gary Boulevard
Phone 405/323-0217 Fax 405/323-0346

Appendix C

Letter from Oklahoma Department of Agriculture

Frank Keating
Governor

Mary Fallin
Lt. Governor

STATE OF OKLAHOMA

DEPARTMENT OF AGRICULTURE

Dennis V. Howard
Commissioner and Secretary

Coy F. Morse
Assistant Commissioner

May 15, 2000

Mr. Vernon Williams, Secretary
Surface Transportation Board
U.S. Department of Transportation
1925 K Street, Suite 500
Washington, D.C. 20423

Re: Ex Parte No. 582 (Sub-No. 1)

Dear Mr. Williams:

Rural America in general and the farm sector in particular are facing the toughest economic times in history. Commodity prices hover around World War II levels while input and transportation costs have risen steadily. It is clear that further rail mergers is not in the best interests of our farmers.

For the past five years we have heard more complaints from our rural grain elevators who report having difficulties receiving rail service. The trend toward larger cars which weigh as much as 286,000 pounds when loaded creates serious problems—including safety problems—throughout western Oklahoma and other Plains states. Our lines were designed to handle cars which weigh about 100,000 pounds.

In addition, the larger lines are insisting on 100 car loads. No single elevator can possibly fill a 100 car shipment of wheat. In fact, many elevators only have room for 15 or 16 cars. These grain handlers can only be serviced by smaller rail services which could be crushed by more mergers.

Past mergers have already worked to effectively end competitive rates for many smaller rail providers. Competitive blocks by larger companies against smaller rail

PO Box 528804, Oklahoma City, OK 73152-8804 • (405) 521-3864 • Fax: (405) 521-4912

and more to the trucking industry. We are concerned about the distortions created in the marketplace when short line shippers are captive to rates set by one Class 1 railroad and lack competitive options.

Rail transportation is vital to Oklahoma's agricultural industry. It's healthy future depends on keeping competition and the smaller rail services still in existence alive. We support the efforts of Oklahoma's short line railroads to provide truly competitive service to their customers.

Sincerely,

Dennis Howard

Dennis Howard
Secretary of Agriculture

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing Verified Comments of Farmrail System, Inc. was served by First Class Mail, Postage Prepaid, on all Parties of Record.

Dated: May 16, 2000

ERIC M. HOCKY